

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

NUMARK SECURITY, INC.

Employer

and

Case 9-RC-17331

INTERNATIONAL GUARDS UNION OF AMERICA

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, ^{1/} the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The Employer, a corporation, is engaged in providing security services to the United States Government at the Commerce Department Census Bureau National Processing Center,

^{1/} The parties waived their right to file briefs in this matter.

herein called the Center, at Jeffersonville, Indiana where it employs approximately 32 employees, including 11 sergeants and 21 officers,^{2/} in the unit found appropriate.

The Petitioner seeks to represent a unit of all guards employed by the Employer at the Center, including sergeants, officers and security center operators. The Employer agrees that the officers should be included in the unit but maintains that the sergeants should be excluded on the basis that they are supervisors and that the officers who sometimes serve as security center operators should be excluded because they do not perform guard functions when working in the security center.

The Center occupies four square miles and contains about 30 buildings. The Center has 10 guard shacks (fixed guard posts) and a security center. The Employer's officers are assigned to the fixed posts and its sergeants are generally assigned to mobile posts (vehicles). One captain and two lieutenants are also employed by the Employer at the Center.^{3/} All persons employed by the Employer at the Center wear police-style uniforms and carry firearms, handcuffs and communications equipment.

The Employer operates three 8-hour shifts per day, 7 days per week; however, some guards are assigned to 12-hour shifts. Each of the 8-hour shifts is manned by two mobile posts, designated as post 9 and post 10. Day and afternoon shifts have 10 manned fixed posts while the night shift has 4.

The security center is located at the Center in room 102 of building 66. It contains 32 video monitors, a 4 channel radio system and intercom capability over the entire Center. The video feeds monitor the parking lots and guard shacks at the Center. The normal complement of persons working in the security center is limited to about four or five Commerce Department employees who serve as security center operators. The security center operators coordinate the activities of the Employer's guards, particularly the mobile posts in responding to accident, emergency and unusual situations, particularly rental trucks in close proximity to government buildings. The security center operators directly receive reports from fixed and mobile posts and coordinate communication among the various posts. They direct the Employer's guards in responding to abnormal situations requiring attention.

Mobile post 10 is required to make rounds of various buildings at the Center and to notify the security center operator upon entering or leaving a building. Mobile post 9 does not have assigned rounds and is primarily responsible for providing a first response to an accident or emergency situation as directed by the security center operator. The Employer's guards are required to follow the orders of the security center operator without question even in the event that such orders contradict previously issued orders.

^{2/} These numbers of employees are reflected in Petitioner's Exhibit 1 which is the Employer's work schedule at Jeffersonville for December 6, 1999 through December 19, 1999.

^{3/} The parties agree, the record reflects and I find that the captain and the lieutenants are supervisors within the meaning of Section 2(11) of the Act.

The officers assigned to the fixed posts are responsible for unlocking gates at 6:30 a.m. and 3:15 p.m. and locking gates at 7:15 a.m. and 4:45 p.m. to allow for the ingress and egress of Commerce Department employees whose security identifications are checked by the guards. At other times, the officers permit the ingress and egress of visitors while checking their security identifications and arranging for parking passes and visitors' badges. The officers are also required to report to the security center operator any unusual occurrences they observe while on duty at their guard shack.

The orders issued to post 9 by the Commerce Department contained in its contract with the Employer provide, among other things, that:

When the captain is not on duty, the Post 9 Officer will serve as the Shift Sergeant/Assistant Supervisor. Post 9 will be responsible for the performance of the other officers on the shift. Duties will also include: Assisting officers in understanding general, post and special orders; and coordinating with the security center operator to resolve problems occurring on the shift. Monitor radio traffic of other officers and provide guidance/correction when necessary. ^{4/}

The orders for post 10 provide for the guard occupying that post to perform the above described duties of post 9 when the Captain or post 9 personnel are not on duty.

According to Lieutenant Larry Tompkins, the captain is the highest ranking Employer official on day shift. A lieutenant is present on afternoon shift, but according to Tompkins, is not in the supervisory chain of command because the Employer's contract with the Commerce Department does not provide for any lieutenants in the supervisory hierarchy. There is no captain or lieutenant present on the night shift.

Sergeants and officers may recommend employees for hire but do not do any actual hiring. Lieutenant Tompkins and Captain Smith are the only persons who interview applicants. Sergeants may perform inspections of guards to ascertain whether their uniforms and equipment are in order and they may complete a written check list recording information from the inspection which is placed in the employee's personnel file. The record reflects that the Employer does not use this check list in making any decisions concerning the employees' terms and conditions of employment. If an inspection discloses that a guard's uniform and equipment are not in order, a follow-up inspection may be performed. The record reflects that since May 1999 when Tompkins became a lieutenant at the Center, the only inspections which have been conducted were performed by the captain. The Employer's disciplinary policy provides for the issuance of written warnings, suspensions and discharges. The lieutenants and captain sign all disciplinary documents but such documents are not signed by sergeants. Sergeants may complete incident reports containing descriptions of their observations of employee misconduct but these reports do not contain any recommendation as to disciplinary action. Captain Smith

^{4/} The Employer relies solely on this contractual language to support its contention that its sergeants are supervisors. The Employer did not make any specific contention that the sergeants independently possess any of the 12 indicia of supervisory status set forth in Section 2(11) of the Act.

schedules the employees' work hours and is the only supervisor who may change the schedule or reassign a guard from one post to another. If a guard is unexpectedly absent from his post during the day, Captain Smith arranges for an unscheduled replacement. However, on the night shift, unexpected vacancies are filled by the post 10 sergeant unless the sergeant can obtain an unscheduled volunteer. The post 10 sergeant may not require an unscheduled employee to report to work. Post 9 sergeants earn \$10.90 per hour, post 10 sergeants earn \$10.75 per hour and officers receive \$10.40 per hour. Sergeants and officers receive the same fringe benefits.

Two of the Employer's officers, Bill Solomon and Mike Hoskins, have completed the 150 hours of training necessary to perform work as a security center operator. The Employer is required by its contract with the Commerce Department to provide service center operators to replace those employed by the Commerce Department when they are absent from work due to illness or vacation. Hoskins and Solomon wear their uniforms and firearms when working in the security center. Lieutenant Tompkins estimated that for the 2 months of October and November in 1999, the Employer furnished the Commerce Department with 160 man-hours of security center services divided among three of its officers.^{5/} Tompkins estimates that during the 30 days prior to the hearing, the Employer furnished 40 hours of security center operator hours to the Commerce Department. Tompkins related that this recent amount of hours furnished to the Commerce Department is unusually high due to a high amount of vacation taken by the Commerce Department security center operators. The employees performing these services receive \$10.90 per hour when working in the security center but only \$10.40 when performing work as officers.

The record reflects that Solomon was the only employee of the Employer who worked at the security center during the period from December 6, 1999 through December 19, 1999. Petitioner's Exhibit 1 reflects that during that period, Solomon worked eight 8-hour shifts performing officer's duties at a fixed post and four 8-hour shifts at the security center. The Exhibit further reflects that during those 14 days, one sergeant was assigned to fixed posts only and that two sergeants and one officer were assigned to both fixed and mobile posts.

ANALYSIS:

Section 9(b)(3) of the Act provides that the Board may not decide that any unit is appropriate for purposes of collective bargaining ". . . if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises." Guard responsibilities include those typically associated with traditional police and plant security functions, such as the enforcement of rules directed at other employees; the possession of authority to compel compliance with those rules; training in security procedures; weapons training and possession; participation in security rounds or patrols; the monitor and control of access to the employer's premises; and wearing guard-type uniforms or displaying other indicia of guard status. Where employees are assigned guard duties for only a portion of their working hours, the percentage of time spent performing guard duties is not of central

^{5/} The third officer subsequently resigned his employment with the Employer.

concern. Instead, the Board considers whether the specific guard duties are something more than a minor or incidental part of the employee's overall responsibilities. *The Boeing Company*, 328 NLRB No. 25, slip. op. p. 3 (1999).

Inasmuch as all of the employees sought by the Petitioner are responsible for protecting Center property and the safety of persons on Center premises, are trained in weapons and security procedures, carry firearms, perform security rounds, monitor and control access to the Center and wear distinctive guard-type uniforms, I find that they are guards within the meaning of Section 9(b)(3) of the Act.

The Employer maintains that Solomon and Hoskins should not be included in the unit because they do not perform guard duties when they work in the security center. The record reflects, however, that the security center operators are responsible for monitoring the security of the entire Center, reporting incidents to the proper authorities and coordinating the activities of the Employer's guards in taking responsive actions. In *Rhode Island Hospital*, 313 NLRB 343, 347 (1993), the Board found that security dispatchers, similar to the security center employees here, were guards because they were responsible for monitoring and reporting any situation which needed responsive action. I conclude, therefore, that Solomon and Hoskins perform guard duties when they work in the security center as well as when they are assigned as officers to fixed posts. Moreover, even if Solomon and Hoskins were true dual function employees, performing guard duties when assigned to fixed posts and nonguard duties when assigned to the security center, I would nonetheless find them to be guards and include them in the unit. See *Blue Grass Industries, Inc.*, 287 NLRB 274, 300 (1987) cited with approval in *M.K. Morse Co.*, 302 NLRB 924 (1991) where watch and sweep employees were found to be guards despite the fact that they spent only 9 percent of their time performing guard duties. Accordingly, I find that the Employer's employees who may be assigned security center operator's duties are guards within the meaning of Section 9(b)(3) and I shall include them in the unit.

I now consider whether the sergeants are supervisors within the meaning of Section 2(11) of the Act. Section 2(11) of the Act defines a supervisor as a person:

. . . having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment. . . .

It must be noted, however, that in enacting Section 2(11) of the Act, Congress emphasized its intention that only supervisory personnel vested with "genuine management prerogatives" should be considered supervisors, and not "straw bosses, leadmen, set-up men and other minor supervisory employees." *Chicago Metallic Corp.*, 273 NLRB 1677, 1688 (1985). Although the possession of any one of the indicia specified in Section 2(11) of the Act is sufficient to confer supervisory status, such authority must be exercised with independent judgment and not in a routine manner. *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). Moreover, the exercise of

“supervisory authority” in merely a routine, clerical, perfunctory or sporadic manner does not confer supervisory status. *Feralloy West Corp. and Pohng Steel America*, 277 NLRB 1083, 1084 (1985); *Chicago Metallic Corp.*, supra; *Advanced Mining Group*, 260 NLRB 486, 507 (1982). It is also well established that the burden of proving that an individual is a supervisor rests on the party asserting supervisory status. *Ohio Masonic Home*, 295 NLRB 390, 393 (1989); *Tree-Free Fiber Co.*, 328 NLRB No. 51 (1999). “Accordingly, whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established at least on the basis of those indicia.” *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

In support of its position that the sergeants are supervisors, the Employer relies on the descriptions, set forth in its contract with the Commerce Department, of the duties of post 9 and post 10 when acting in the capacity of Shift Sergeant/Assistant Supervisor. Assuming that these descriptions accurately reflect the actual duties of the Employer's sergeants,^{6/} the evidence does not establish that such duties involve the use of independent judgment in directing employees' work. The record affirmatively demonstrates that the Employer's captain and lieutenants and, to some extent, security center operators are the people from whom the Employer's guards receive direction.

Sergeants as well as any other guard may make hiring recommendations, but the captain and the lieutenants are the only people who interview applicants. Such circumstance, where it appears that the sergeants are not involved in the actual hiring decision process and their involvement in hiring is the same as other employees in the unit, are not sufficient to establish that they possess authority to effectively recommend hiring employees. *World Theatre Corporation*, 316 NLRB 969 (1995). The record shows that the sergeants complete inspection reports as to whether guards' uniforms and equipment are in order. However, because these inspection reports are not used by the Employer in making decisions affecting the employees' terms and conditions of employment, the completion of them does not involve the exercise of supervisory authority. *Waverly-Cedar Falls Health Care*, 297 NLRB 390, 392 (1989). The sergeants' role in administering discipline is limited to reporting incidents of misconduct upon which discipline may be based, but does not involve any input as to what action, if any, should be taken against the employee as a result. Such a reporting function does not confer authority on sergeants to effectively recommend discipline. *Rahco, Inc.*, 265 NLRB 235, 247 fn. 22 (1982) cited with approval in *Northcrest Nursing Home*, 313 NLRB 491, fn. 30 (1993). Authority to schedule employees' work hours lies solely with the Captain and the sergeants are not involved in that process. Although the sergeants may solicit volunteers to fill in for unexpectedly absent night shift employees, they may not compel other employees to report to work. Solicitation of such volunteers, in the absence of authority to compel employees to report, is insufficient to confer supervisory status. *Northcrest*, supra at 505.

Based on the foregoing and the entire record, I find that the sergeants are not supervisors within the meaning of Section 2(11) of the Act. Accordingly, I shall include them in the unit.

^{6/} The record does not contain any evidence that the descriptions contained in the contract inaccurately reflect the duties actually performed by the sergeants.

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

All guards, including sergeants, officers and security center operators employed by the Employer at the Department of Commerce Census Bureau National Processing Center at Jeffersonville, Indiana, excluding all professional employees and supervisors as defined in the Act.

Accordingly, I shall direct an election among the employees in such unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Guards Union of America**.

LIST OF ELIGIBLE VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB No. 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election subject to the Petitioner's submission of an adequate showing of interest. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **December 29, 1999**. No extension of time to file this list shall be

granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **January 5, 2000**.

Dated at Cincinnati, Ohio this 22nd day of December 1999.

Edward C. Verst, Acting Regional Director
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